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Attorneys for Defendant

BBVA Compass Insurance Agency, Inc.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JACK D. HARRISON AND NAOMA )  
HARRISON, )

Plaintiffs, )

v. )

BANKERS STANDARD )  
INSURANCE COMPANY, ACE )  
PROPERTY AND CASUALTY )  
INSURANCE COMPANY, )  
AMERICAN FAMILY MUTUAL )  
INSURANCE COMPANY AND )  
BBVA COMPASS INSURANCE )  
AGENCY, INC. AND DOES 1 )  
THROUGH 50 )

Defendants. )

Case No.: 13 CV 1682 DMS JMA

**DEFENDANT BBVA COMPASS  
INSURANCE AGENCY'S  
ANSWER AND AFFIRMATIVE  
DEFENSES TO COMPLAINT**

BBVA Compass Insurance Agency, Inc. ("Compass"), by its counsel,  
answers and responds to Plaintiffs Jack D. Harrison's and Naoma Harrison's

1 (collectively, “Plaintiffs”) Complaint as follows:

2 1. Compass admits only that Plaintiffs are individuals, but Compass  
3 otherwise lacks knowledge or information sufficient to form a belief as to the truth  
4 or falsity of the remaining allegations contained in Paragraph 1.

6 2. Compass lacks knowledge or information sufficient to form a belief as  
7 to the truth or falsity of the allegations contained in Paragraph 2.

9 3. Compass lacks knowledge or information sufficient to form a belief as  
10 to the truth or falsity of the allegations contained in Paragraph 3.

12 4. Compass lacks knowledge or information sufficient to form a belief as  
13 to the truth or falsity of the allegations contained in Paragraph 4.

15 5. Compass is unable to discern what is meant by “private company” and  
16 “home office,” but attempting to respond, Compass states that its shares are not  
17 publicly traded and that its license address is in Austin, Texas. Compass otherwise  
18 lacks knowledge or information sufficient to form a belief as to the truth or falsity  
19 of the remaining allegations contained in Paragraph 5.

22 6. The allegations contained in Paragraph 6 constitute legal conclusions  
23 rather than allegations of fact, and therefore no response is required. Compass  
24 does not contest subject matter jurisdiction in this matter.

26 7. Compass lacks knowledge or information sufficient to form a belief as  
27 to the truth or falsity of the allegations contained in Paragraph 7. Compass does  
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1 not contest subject matter jurisdiction here.

2 8. Compass lacks knowledge or information sufficient to form a belief as  
3 to the truth or falsity of the allegations contained in Paragraph 8. Compass denies  
4 that it engaged in any violation of law or other wrongdoing, denies any and all  
5 alleged liability to Plaintiffs, and denies that Plaintiffs are entitled to any relief.  
6

7 9. To the extent the allegations contained in Paragraph 9 constitute legal  
8 conclusions regarding venue rather than allegations of fact, no response is required.  
9 Compass does not contest venue in this matter. To the extent a response may be  
10 required, Compass denies that it engaged in any violation of law or other  
11 wrongdoing, denies any and all alleged liability to Plaintiffs, denies that Plaintiffs  
12 are entitled to any relief, and otherwise denies the allegations contained in  
13 Paragraph 9.  
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### 17 **Answers to General Allegations**

18 10. Compass lacks knowledge or information sufficient to form a belief as  
19 to the truth or falsity of the allegations contained in Paragraph 10.  
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22 11. Compass lacks knowledge or information sufficient to form a belief as  
23 to the truth or falsity of the allegations contained in Paragraph 11.  
24

25 12. Compass admits only that a home insurance policy bearing number  
26 268-03-86-69H (“Home Insurance Policy”) and a Valuables policy bearing number  
27 268-03-86-69V (“Valuables Policy”) (collectively, “Ace Policies”) were issued to  
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1 Plaintiffs for the period July 20, 2011 to July 20, 2012, in connection with real  
2 estate located in Rancho Sante Fe, California. Compass otherwise lacks  
3 knowledge or information sufficient to form a belief as to the truth or falsity of the  
4 remaining allegations contained in Paragraph 12.

6 13. Compass lacks knowledge or information sufficient to form a belief as  
7 to the truth or falsity of the allegations contained in Paragraph 13.

9 14. Compass lacks knowledge or information sufficient to form a belief as  
10 to the truth or falsity of the allegations contained in Paragraph 14.

12 15. Compass lacks knowledge or information sufficient to form a belief as  
13 to the truth or falsity of the allegations contained in Paragraph 15, and based on  
14 such lack of knowledge and information, denies such allegations.

16 16. The wording used in Paragraph 16 is so vague and overly broad that  
17 Compass is unable to ascertain sufficient information to be able to accurately  
18 respond to the allegations raised. Compass is unable to discern what is meant by  
19 “Defendants’ agents,” “full coverage,” or “additional insurance from the truck  
20 rental company” as these phrases are used in Paragraph 16. Compass denies that it  
21 engaged in any violation of law or other wrongdoing, denies any and all alleged  
22 liability to Plaintiffs, denies that Plaintiffs are entitled to any relief, and otherwise  
23 denies the allegations contained in Paragraph 16.

25 17. Compass lacks knowledge or information sufficient to form a belief as  
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1 to the truth or falsity of the allegations contained in Paragraph 17.

2 18. Compass is unable to discern what is meant by “made claims on the  
3 Defendants,” but attempting to respond, Compass denies the allegations as to it,  
4 and lacks knowledge or information sufficient to form a belief about the truth of  
5 the remaining allegations contained in Paragraph 18.  
6

7 19. Compass is unable to discern what is meant by “Defendants” and  
8 “investigation,” but attempting to respond, Compass denies the allegations as to it,  
9 and lacks knowledge or information sufficient to form a belief as to the truth or  
10 falsity of the remaining allegations contained in Paragraph 19.  
11

12 20. Upon information and belief, Compass admits that payments were  
13 sent to the Plaintiffs by Bankers and/or Ace in or around June 2012, but lacks  
14 knowledge or information sufficient to form a belief as to the truth or falsity of the  
15 remaining allegations contained in Paragraph 20.  
16

17 21. Compass lacks knowledge or information sufficient to form a belief as  
18 to the truth or falsity of the allegations contained in Paragraph 21.  
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20 22. Compass lacks knowledge or information sufficient to form a belief as  
21 to the truth or falsity of the allegations contained in Paragraph 22. Compass denies  
22 that it engaged in any violation of law or other wrongdoing, denies any and all  
23 alleged liability to Plaintiffs, denies that Plaintiffs are entitled to any relief, and  
24 otherwise denies the remaining allegations contained in Paragraph 22.  
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**Answers to Specific Allegations as to Ace/Bankers/BBVA (“Ace”)**

23. Compass lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 23.

24. Compass lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 24.

25. Upon information and belief, Compass admits only that payment was made to the Plaintiffs in or around June 2012, but lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 25.

26. Compass lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 26.

27. Compass admits only that a home insurance policy bearing number 268-03-86-69H (“Home Insurance Policy”) and a Valuables policy bearing number 268-03-86-69V (“Valuables Policy”) (collectively, “Ace Policies”) were obtained by Plaintiffs through Compass with the specific coverages and amount of premiums charged specified in the declaration pages for the Ace Policies, and that Paula Brevig was an employee of Compass in July 2011. The wording of the remaining allegations contained in Paragraph 27 is so vague and overly broad that Compass cannot accurately simply admit or deny those allegations. Compass

1 cannot discern what Plaintiffs mean by the use of the terms “full coverage” and  
2 “agent.” The exact terms of the Ace Policies, including all exclusions applicable  
3 to a variety of circumstances are contained in the language of the Ace Policies.  
4  
5 Compass denies that the Ace Policies provided insurance coverage for all  
6 situations for the maximum coverage amount without any limitations or exclusions  
7 being applicable. The coverages provided by the Ace Policies are contained in the  
8 language of those policies and copies of these policies, including all exclusions and  
9 limitations, were provided to Plaintiffs. Compass lacks knowledge or information  
10 sufficient to form a belief as to the truth or falsity of the remaining allegations  
11 contained in Paragraph 27.

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15 28. Compass lacks knowledge or information sufficient to form a belief as  
16 to the truth or falsity of the allegations contained in Paragraph 28.

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18 29. Compass lacks knowledge or information sufficient to form a belief as  
19 to the truth or falsity of the allegations contained in Paragraph 29.

20  
21 30. The allegations contained in Paragraph 30 constitute legal conclusions  
22 rather than allegations of fact, and therefore no response is required. To the extent  
23 that a response may be required, Compass lacks knowledge or information  
24 sufficient to form a belief as to the truth or falsity of the allegations contained in  
25 Paragraph 30.

26  
27  
28 31. Plaintiffs were provided full and complete copies of the insurance

1 policies in issue, which contained all limitations and exclusions in writing, as well  
2 as a complete description of all coverage afforded. Compass denies that it engaged  
3 in any violation of law or other wrongdoing, denies any and all alleged liability to  
4 Plaintiffs, denies that Plaintiffs are entitled to any relief, and otherwise denies the  
5 allegations contained in Paragraph 31.  
6

7  
8 32. Compass lacks knowledge or information sufficient to form a belief as  
9 to the truth or falsity of the allegations contained in Paragraph 32.  
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11 33. Compass lacks knowledge or information sufficient to form a belief as  
12 to the truth or falsity of the allegations contained in Paragraph 33.  
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14 34. Compass lacks knowledge or information sufficient to form a belief as  
15 to the truth or falsity of the allegations contained in Paragraph 34.  
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17 35. Compass lacks knowledge or information sufficient to form a belief as  
18 to the truth or falsity of the allegations contained in Paragraph 35.  
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20 36. Compass lacks knowledge or information sufficient to form a belief as  
21 to the truth or falsity of the allegations contained in Paragraph 36.  
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23 37. Compass is unable to discern what is meant by “the Harrisons notified  
24 them through counsel,” but attempting to respond, Compass admits it received  
25 correspondence from the Plaintiffs’ counsel dated June 6, 2013 and titled “Notice  
26 of Intent to Sue.” Compass denies that it engaged in any violation of law or other  
27 wrongdoing, denies any and all alleged liability to Plaintiffs, denies that Plaintiffs  
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1 are entitled to any relief, and otherwise denies the remaining allegations contained  
2 in Paragraph 37.

3 38. Compass lacks knowledge or information sufficient to form a belief as  
4 to the truth or falsity of the allegations contained in Paragraph 38.

5  
6 **Answers to Specific Allegations as to American**

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8 39. Compass lacks knowledge or information sufficient to form a belief as  
9 to the truth or falsity of the allegations contained in Paragraph 39.

10 40. To the extent that the allegations contained in Paragraph 40 constitute  
11 legal conclusions rather than allegations of fact, no response is required. To the  
12 extent a response may be required, Compass lacks knowledge or information  
13 sufficient to form a belief as to the truth or falsity of the allegations.

14  
15 41. Compass is unable to discern what is meant by “actions of Ace,” but  
16 attempting to respond, Compass lacks knowledge or information sufficient to form  
17 a belief as to the truth or falsity of the allegations contained in Paragraph 41.

18 42. Compass lacks knowledge or information sufficient to form a belief as  
19 to the truth or falsity of the allegations contained in Paragraph 42.

20 43. Compass lacks knowledge or information sufficient to form a belief as  
21 to the truth or falsity of the allegations contained in Paragraph 43.

22 44. Compass lacks knowledge or information sufficient to form a belief as  
23 to the truth or falsity of the allegations contained in Paragraph 44.

1           45. Compass lacks knowledge or information sufficient to form a belief as  
2 to the truth or falsity of the allegations contained in Paragraph 45.

3           46. Compass lacks knowledge or information sufficient to form a belief as  
4 to the truth or falsity of the allegations contained in Paragraph 46.

5           47. Compass lacks knowledge or information sufficient to form a belief as  
6 to the truth or falsity of the allegations contained in Paragraph 47.

7           48. Compass lacks knowledge or information sufficient to form a belief as  
8 to the truth or falsity of the allegations contained in Paragraph 48.

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12                   **ANSWER TO FIRST CAUSE OF ACTION**  
13                   **(Declaratory Judgment Against Ace and American)**

14           49. Compass restates and incorporates by reference its answers and  
15 responses to Paragraphs 1-48 as its answer and response to Paragraph 49.

16  
17           50-52. The remaining allegations contained in Paragraphs 50-52 of this  
18 Cause of Action are not asserted against Compass, and therefore no response is  
19 required by Compass. To the extent a response may be required, Compass denies  
20 that it engaged in any violation of law or other wrongdoing, denies any and all  
21 alleged liability to Plaintiffs, denies that Plaintiffs are entitled to any relief, and  
22 otherwise denies the remaining allegations contained in these Paragraphs.  
23  
24

25                   **ANSWER TO SECOND CAUSE OF ACTION**  
26                   **(Breach of Contract Against Ace and American)**

27           53. Compass restates and incorporates by reference its answers and  
28

1 responses to Paragraphs 1-52 as its answer and response to Paragraph 53.

2 54-58. The remaining allegations contained Paragraphs 54-58 in this Cause  
3 of Action are not asserted against Compass, and therefore no response is required  
4 by Compass. To the extent a response may be required, Compass denies that it  
5 engaged in any violation of law or other wrongdoing, denies any and all alleged  
6 liability to Plaintiffs, denies that Plaintiffs are entitled to any relief, and otherwise  
7 denies the remaining allegations contained in these Paragraphs.  
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11 **ANSWER TO THIRD CAUSE OF ACTION**  
12 **(For Violations of California Unfair Insurance Practices Act**  
13 **B&P Code §17200 Against Ace and American)**

14 59. Compass restates and incorporates by reference its answers and  
15 responses to Paragraphs 1-58 as its answer and response to Paragraph 59.

16 60-65. The remaining allegations contained Paragraphs 60-65 in this Cause  
17 of Action are not asserted against Compass, and therefore no response is required  
18 by Compass. To the extent a response may be required, Compass denies that it  
19 engaged in any violation of law or other wrongdoing, denies any and all alleged  
20 liability to Plaintiffs, denies that Plaintiffs are entitled to any relief, and otherwise  
21 denies the remaining allegations contained in these Paragraphs.  
22  
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24  
25 **ANSWER TO FOURTH CAUSE OF ACTION**  
26 **(Breach of the Implied Covenant of Good Faith and Fair Dealing Against**  
27 **All Defendants – First Party Claim)**

28 66. Compass restates and incorporates by reference its answers and

1 responses to Paragraphs 1-65 as its answer and response to Paragraph 66.

2 67. The allegations contained in Paragraph 67 constitute legal conclusions  
3 rather than allegations of fact, and therefore no response is required. To the extent  
4 a response may be required, Compass denies the allegations contained in  
5 Paragraph 67 as they relate to this case.  
6

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8 68. Compass denies the allegations contained in Paragraph 68.

9 69. Compass denies the allegations contained in Paragraph 69.

10  
11 **ANSWER TO FIFTH CAUSE OF ACTION**  
12 **(Fraud Against Ace and BBVA)**

13 70. Compass restates and incorporates by reference its answers and  
14 responses to Paragraphs 1-69 as its answer and response to Paragraph 70.

15 71. Compass denies the allegations contained in Paragraph 71.

16 72. Compass denies the allegations contained in Paragraph 72.

17 73. Compass denies the allegations contained in Paragraph 73.

18 74. Compass denies the allegations contained in Paragraph 74.

19 75. Compass denies the allegations contained in Paragraph 75 as to it.  
20  
21 Compass otherwise lacks knowledge or information sufficient to form a belief as to  
22 the truth or falsity of the remaining allegations contained in Paragraph 75.  
23

24 76. Compass denies the allegations contained in Paragraph 76.

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26 **ANSWER TO SIXTH CAUSE OF ACTION**  
27 **(Negligent Misrepresentation Against Ace and BVVD [*sic*])**  
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1 77. Compass restates and incorporates by reference its answers and  
2 responses to Paragraphs 1-76 as its answer and response to Paragraph 77.

3 78. Compass denies the allegations contained in Paragraph 78.  
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5 79. Compass denies the allegations contained in Paragraph 79.

6 80. Compass denies the allegations contained in Paragraph 80.  
7

8 81. Compass denies the allegations contained in Paragraph 81.

9 82. Compass denies the allegations contained in Paragraph 82.  
10

11 83. Compass denies the allegations contained in Paragraph 83.

12 84. Compass denies the allegations contained in Paragraph 84.  
13

### 14 **AFFIRMATIVE DEFENSES**

15 In addition to the denials and admissions stated above, Compass states the  
16 following for its Affirmative Defenses:

#### 17 **First Affirmative Defense**

18  
19 1. The Complaint, and each purported claim contained therein, fails to  
20 state a claim upon which relief may be granted, and Compass reserves and does not  
21 waive any arguments relating to the legal sufficiency of Plaintiffs' allegations.  
22

#### 23 **Second Affirmative Defense**

24  
25 2. That Plaintiffs, by their own conduct, have waived one or more of  
26 their claims alleged in the Complaint.  
27

#### 28 **Third Affirmative Defense**

1           3.     That Plaintiffs are estopped and barred from obtaining the relief  
2 requested in the Complaint as against Compass. The Complaint herein, and each  
3 and every cause of action contained therein, are barred by reason of acts,  
4 omissions, representations and courses of conduct by Plaintiffs by which Compass  
5 was led to rely to their detriment, thereby barring relief under the doctrine of  
6 equitable estoppel under any cause of action asserted by Plaintiff.  
7  
8

9                                   **Fourth Affirmative Defense**

10           4.     Compass is excused from any and all liability under the alleged to  
11 Plaintiffs' claims for relief because at all material times Compass acted in good  
12 faith and conducted all material transactions in good faith based on the information  
13 provided to it by Plaintiffs.  
14  
15

16                                   **Fifth Affirmative Defense**

17           5.     As to the claims and circumstances alleged in the Complaint,  
18 Compass reasonably relied on the information provided to it by Plaintiffs, and  
19 owed no legal duty to Plaintiffs to provide information and advice as to alternative  
20 or additional insurance coverage available.  
21  
22

23                                   **Sixth Affirmative Defense**

24           6.     That Plaintiffs have unreasonably delayed in bringing the claims set  
25 forth in the Complaint, despite admitting having knowledge of such facts, Plaintiffs  
26 permitted Compass to believe such acts were permissible, Plaintiffs profited from  
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28

1 such acts, and Compass has been prejudiced by this delay on the part of Plaintiffs  
2 so as to bar the claims for relief by Plaintiff.

3  
4 **Seventh Affirmative Defense**

5 7. To the extent that Plaintiffs seek equitable relief, their own inequitable  
6 conduct constitutes unclean hands, and therefore bars the granting of the relief  
7 sought herein.  
8

9 **Eighth Affirmative Defense**

10 8. To the extent Plaintiffs suffered any alleged damages, the existence of  
11 which are expressly denied, the alleged damages are barred and/or limited in whole  
12 or in part by Plaintiffs' own failure to mitigate the alleged damages.  
13  
14

15 **Ninth Affirmative Defense**

16 9. To the extent Plaintiffs suffered any alleged damages, the existence of  
17 which are expressly denied, such alleged damages were caused in whole or in part  
18 by Plaintiffs' own acts or omissions, and/or the alleged damages were caused in  
19 whole or in part by individuals and/or entities over whom Compass had no control,  
20 right of control or responsibility.  
21  
22

23 **Tenth Affirmative Defense**

24 10. Plaintiffs' claims are barred by the applicable limitation of action set  
25 forth in their insurance contracts.  
26  
27  
28

1 The above affirmative defenses are based on the facts currently known to  
2 Compass, and Compass reserves the right to amend or add affirmative defenses  
3 based on facts that may later be discovered, pled, or offered.  
4

5  
6 WHEREFORE, Compass requests as follows:

- 7
- 8 1. That Plaintiffs take nothing by its Complaint against Compass, and  
9 that the same be dismissed with prejudice and without leave to re-file;  
10
  - 11 2. That judgment be entered in favor of Compass and against Plaintiffs;
  - 12 3. That Compass be awarded its costs of suit incurred herein; and
  - 13 4. The Court award to Compass such further and additional relief as the  
14 Court deems just and proper.  
15

16  
17 Respectfully submitted,

18 **MCGINNIS WUTSCHER BEIRAMEE LLP,**  
19

20 Dated: October 10, 2013

21 By: /s/ Deborah S. Gershon  
22 Deborah S. Gershon (SBN 93816)  
23 Sherilyn L. O'Dell, *Of Counsel* (SBN  
24 145315)  
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Facsimile: (866) 581-9302  
*Attorneys for BBVA Compass Insurance  
Agency, Inc.*

**CERTIFICATE OF SERVICE**

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the County of Orange, California; my business address is 19200 Von Karman, Suite 750, Irvine, California 92612.

On the date below I served a copy, with all exhibits, of the following document(s):

**DEFENDANT BBVACOMPASS INSURANCE AGENCY'S  
ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT**

on all interested parties in said case addressed as follows:

**Attorney for Plaintiffs**

James B. Panther, Esq.  
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**[X] (BY ELECTRONIC SERVICE)** Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF system sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's EC/ECF system.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I declare that I am a member of the Bar of this Court at whose direction the service was made. This declaration is executed on **October 10, 2013**.

/s/ Deborah S. Gershon